

Title IX Coordinator Training

Presented To:
The Mississippi School Board
Association

Presented By:
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October 15, 2020
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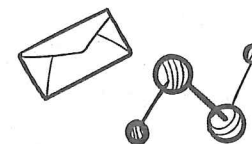
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Title IX



No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C 1681(a) Title IX
Education Amendments of 1972



Where and When?

34 CFR Part 106 – Amendments
to Title IX Regulations and New
Sections

Effective date: August 14, 2020

Major Provisions

- ✓ Define conduct constituting Title IX sex harassment
- ✓ Specify conditions that activate obligation to respond to sex harassment allegations
- ✓ Impose general standard for sufficiency of response
- ✓ Specify requirements that response must include (ex. supportive measures)
- ✓ Establish procedural due process protections that must be in grievance process

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- ✓ Affirm that OCR may require recipients to take remedial action for discriminating on basis of sex or otherwise violate Title IX
- ✓ Clarify that recipients are not required to deprive individuals of rights guaranteed under U.S. Constitution when responding to sexual harassment claim under Title IX
- ✓ Acknowledge intersection of Title IX, Title VII, and FERPA and legal rights of parents to act
- ✓ Update Title IX Coordinator designations, notice requirements, and policy distribution
- ✓ Prohibit retaliation

JOB (Responsibilities) in the Title IX Processes



Determine who handles these jobs:

- Title IX coordinator
 - Dismissals
 - Facilitator
 - Investigator
 - Initial decision maker (separate person(s))
 - Appeal decision maker (separate person(s))
- 

Who can handle which Job?



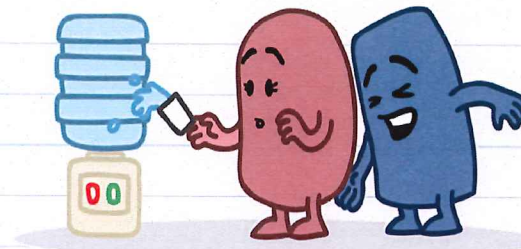
- ✓ Must have a Title IX Coordinator.
- ✓ Can outsource one or more of the other jobs.
- ✓ Only overlap in duties can occur in Title IX coordinator, dismissals, facilitator, and investigator roles. (Best practice to separate some of these jobs.)

Complainant



The individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent



The individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.

Training

- ✓ Recognize and eliminate bias for or against a complainant or respondent
- ✓ Recognize and eliminate conflicts of interest
- ✓ Understanding definition of sexual harassment under Title IX
- ✓ Understanding “scope of the District’s program or activity”

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- ✓ How to conduct an investigation and grievance process
- ✓ Training investigators how to prepare an investigation report.
- ✓ Training decision makers – both initial and appeal
- ✓ Training ALL EMPLOYEES on actual notice and reporting

Bias

state mind where the person has a predisposition in favor of or against someone or something.



must be conscious of bias and keep an open mind toward both parties

Bias

Example: Can't assume all complainants are victims or all respondents are wrongly accused. Must listen to all facts presented.

Conflict of Interest

a conflict between the private interests and the official responsibilities of a person in a position of trust



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Is the person handling the job related to a party?

Does the person handling the job have a financial interest in the outcome?

One of the many reasons it is important to eliminate bias and conflicts of interest:

The grievance process provides that the decision may be overturned on appeal by the appeal decision maker if the Title IX Coordinator, investigator(s) or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

Definition of Sexual Harassment under Title IX

*Conduct on the basis of sex that meets one
or more of the following:*

An employee of the recipient (i.e. educational institution such as a school district that receives federal funds) conditioning the provision of an aid, benefit or service of the educational institution on an individual's participation in unwelcome sexual conduct (quid pro quo sexual harassment);

Definition of Sexual Harassment under Title IX

*Conduct on the basis of sex that meets one
or more of the following:*

Cont.

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity (hostile environment);

Definition of Sexual Harassment under Title IX

*Conduct on the basis of sex that meets one
or more of the following:*

Cont.

“Sexual assault” as defined in 20 U.S.C.
1092(f)(6)(A)(v),

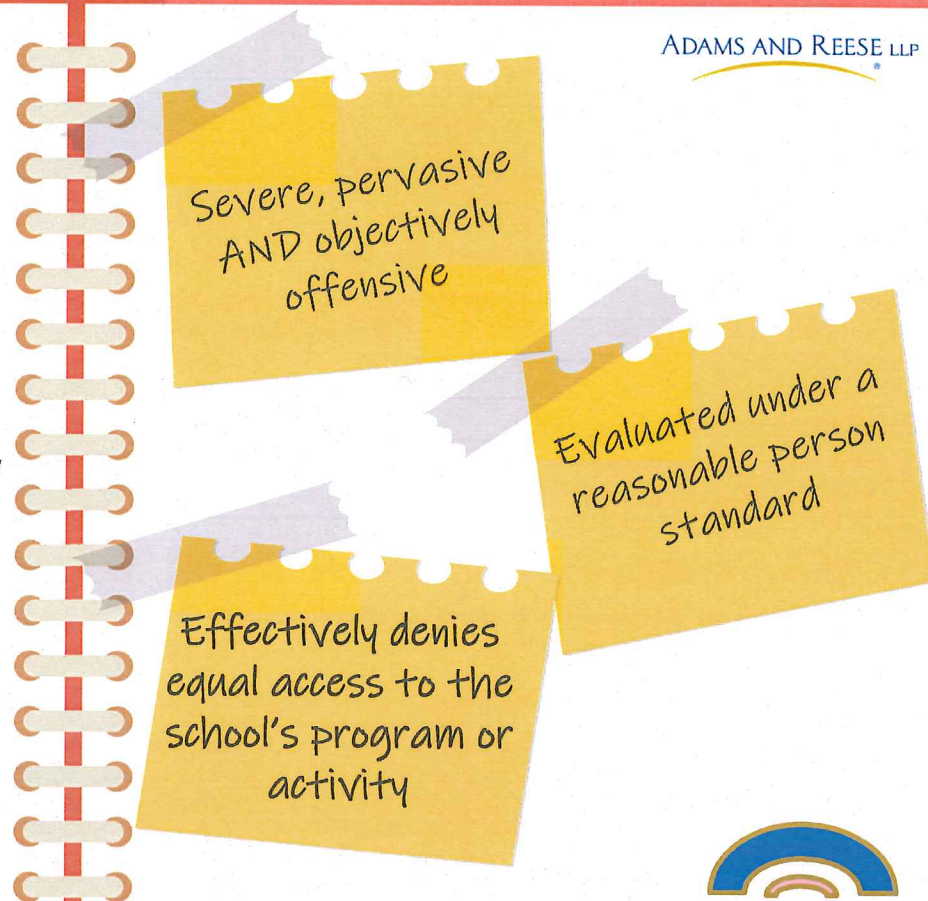
“dating violence” as defined in 34 U.S.C. 12291(a)(10),

“stalking” as defined in 34 U.S.C. 12291(a)(30), or

“domestic violence” as defined in 34 U.S.C. 12291(a)(8)

Prong 2 –Hostile Environment

Requires the most analysis, generally, to determine if the allegations “meet” the segments of each description



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Education Program or Activity

Title IX previously defined as all the “operations of a [district]....”

However, in 34 C.F.R. § 106.44(a), the definition has been enlarged to include any location, event or circumstance over which the district exercised substantial control over both the respondent and the context in which the harassment occurs.

Education Program or Activity – Preamble comments

No single factor is determinative – fact specific inquiry

“A teacher’s sexual abuse of a student ‘undermines the basic purposes of the educational system’ thereby implicitly recognizing that a teacher’s sex harassment of student is likely to constitute sex harassment ‘in the program’ of the school even if the harassment occurs off campus.”

Student using personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the district exercises substantial control.

Training Addressed in Subsequent Sessions



How to conduct an investigation and grievance process
(October 22, 2020)

Training investigators how to prepare an investigation report.
(October 22, 2020)

Training decision makers – both initial and appeal
(October 29, 2020)

Training ALL EMPLOYEES on Actual Knowledge and Reporting

“Actual knowledge” of sexual harassment is notice of sexual harassment or allegations of sexual harassment to ANY EMPLOYEE



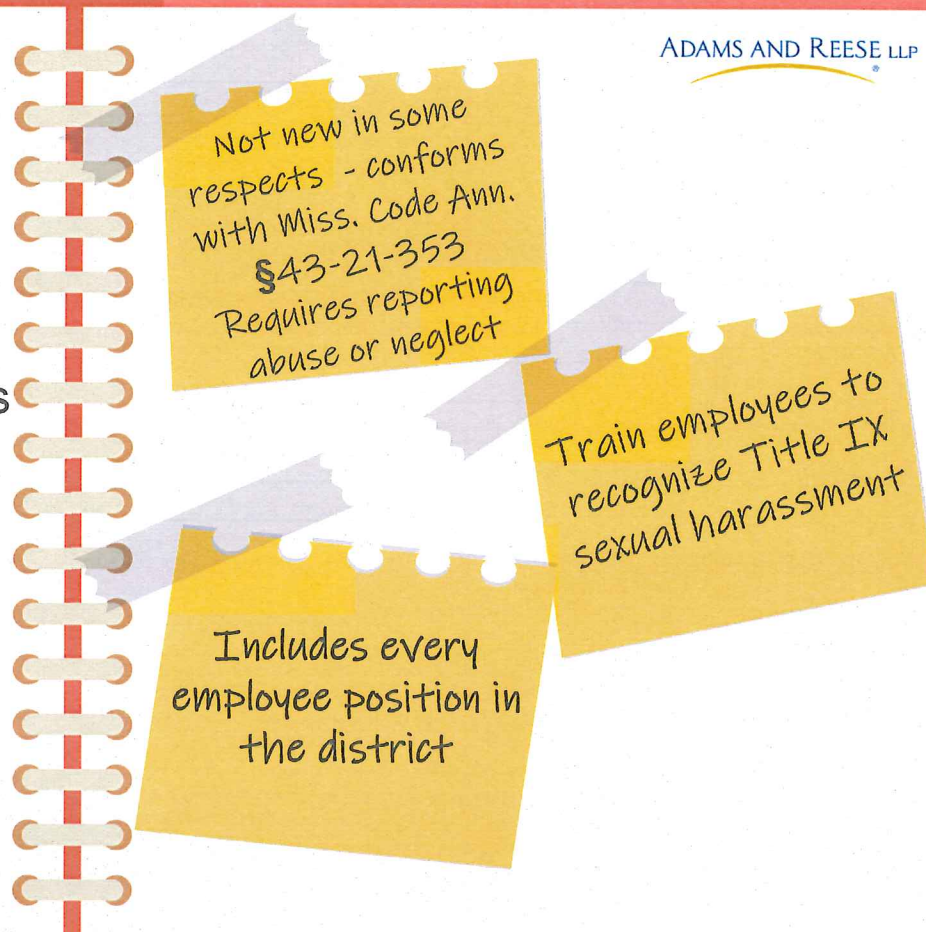
Easy call –
Complainant reports
it verbally or in
writing

Includes third party
reporting (parent,
friend or community
member) verbally or in
writing

Anonymous
reporting? Yes,
also included

Training ALL EMPLOYEES on Actual Knowledge and Reporting (cont.)

Actual Knowledge activates district's
Title IX response requirements

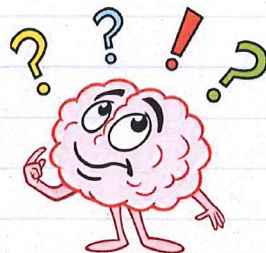


Which of the Below Examples are Actual Knowledge?

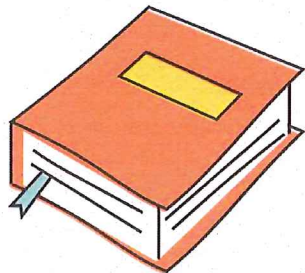
Employee overhears students discussing another student having a sexual relationship with an employee

Employees see sexualized graffiti scrawled across school locker

A community member tells an employee about a student having a sexual relationship with an employee



Website and Handbook Notice Requirements



Publish Notice of Title IX Nondiscrimination on website (link to policies) and in supplement to handbooks

State how to file or report sexual harassment and how District will respond to students and parents/legal guardians

List Title IX Coordinator's name, title, email/ office address and telephone number

Your Job

Title IX Coordinator

1. Authorized by the District to coordinate the District's Title IX compliance program – must have capacity;
2. Receive and respond promptly to all general reports as well as formal complaints of sexual harassment;
3. Coordinate the District's responses to both reports and formal complaints of sexual harassment so that the same are prompt and equitable;
4. Meet with a complainant and inform the parent/guardian once you become aware of allegations of conduct that could constitute sexual harassment as defined in Title IX;



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5. Identify and implement supportive measures;
6. Sign, in certain cases, the complaint of sexual harassment;
7. Engage with the parents/guardians of parties to any formal complaint of sexual harassment;
8. Coordinate with District and school-level personnel to facilitate and assure implementation of investigations, and remedies, and help to assure that the District otherwise meets its obligations associated with reports and complaints of sexual harassment;



Your Job

Title IX Coordinator

9. Monitor the formal complaint progress to make sure the correct notices are provided and the steps are in the required order.

10. Set the timeframes to ensure the District promptly addresses sexual harassment allegations that fall under Title IX (policy may also address – some timeframes mandated);

11. Determine, in emergency situations, whether an individualized safety and risk analysis is required with regard to a respondent;

12. Inform the Superintendent of any employee respondents so that the Superintendent can make any required reports to Mississippi Department of Education in compliance with applicable statutes, administrative regulations, and the Mississippi Educator Code of Ethics and Standards of Conduct.



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13. Coordinate with supervisor with respect to assignment of persons to fulfill the District's obligations, both general and case specific (including who will served as "Acting Title IX Coordinator" when Title IX coordinator is unavailable).

14. Coordinate with District and school-level personnel to assure appropriate training and professional development of employees and others in accordance with the training requirements in the Title IX amended regulations.

15. Develop and implement systems to maintain sexual harassment records and data for a period of seven years.



How Should the Title IX Coordinator Respond to Actual Knowledge?

Must respond promptly to actual knowledge of sexual harassment in an education program or activity in a manner that is not deliberately indifferent

District is deliberately indifferent if its response is clearly unreasonable in light of known circumstances

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MUST AVOID
DELIBERATE
INDIFFERENCE

How Should the Title IX Coordinator Respond to Actual Knowledge?

Cont.

District must treat complainants and respondents equitably by

- 1)Offering supportive measures to a complainant and respondent, and
- 2)Following a grievance process BEFORE imposing any disciplinary sanctions on a respondent, and
- 3)Provide remedies to complainant AFTER determination of responsibility of respondent

What are Supportive Measures?

Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint or where a complaint has not been filed

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counseling, course modifications, schedule changes, increased monitoring or supervision, etc.

What are Supportive Measures?

Supportive measures should be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party

Cont.

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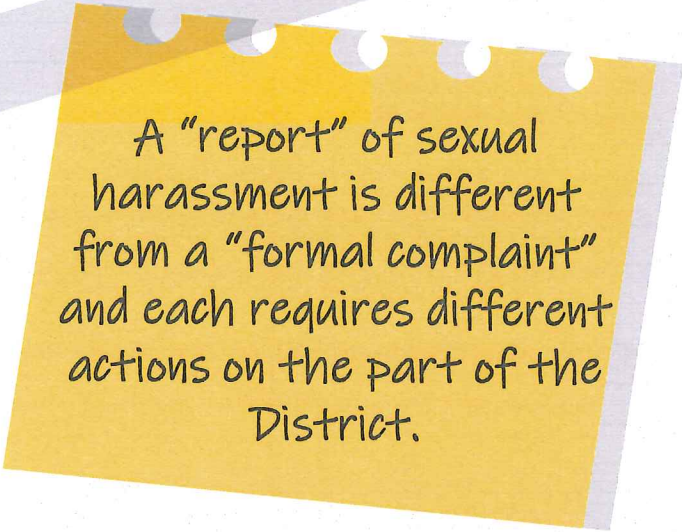
For example, a supportive measure that completely removes the respondent from an activity could be considered punitive.

Immediate removal of respondent **ONLY if**

1. District conducts an individualized safety and risk analysis, and
2. Determines that an emergency removal is necessary to protect a student or other individual from an immediate threat to physical health or safety
3. Must provide respondent with notice and an opportunity to challenge the decision immediately after removal
4. Can implement immediate removal with regard to both student and employee respondents

Report

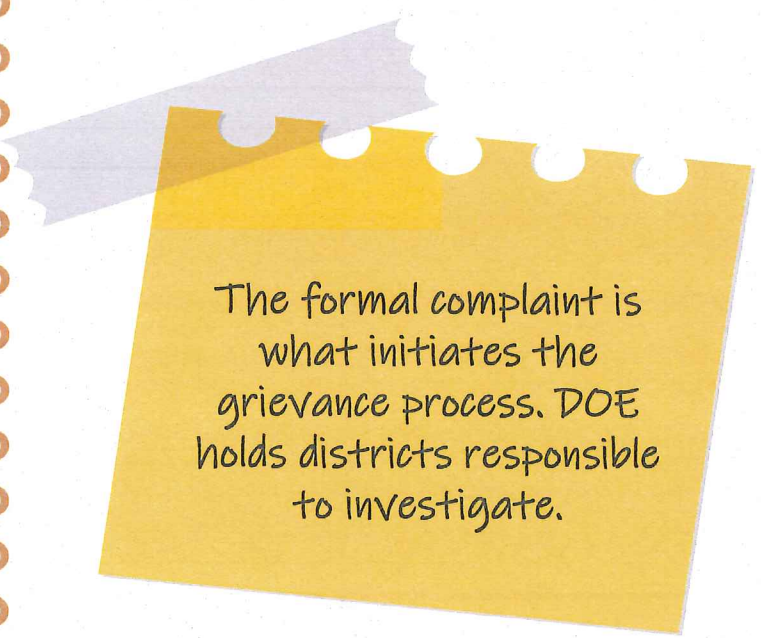
meet with complainant, offer supportive measures (available whether or not files a formal complaint) and consider wishes of complainant as to supportive measures, explain how to file a formal complaint



A "report" of sexual harassment is different from a "formal complaint" and each requires different actions on the part of the District.

Formal Complaint

document filed by a complainant, the complainant's parent/guardian, or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegations.



The formal complaint is what initiates the grievance process. DOE holds districts responsible to investigate.

What to do when
a formal
complaint is filed

34 C.F.R. § 106.45(b)(2)

Written notice to all parties must contain:

notice of the grievance process, including informal resolution process;

notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Title IX, include the below known details

- identity of the parties(if known);
- conduct allegedly constituting sexual harassment under Title IX
- date and location of incident (if known);

a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;

notice that the parties may have an advisor of their choice (may or may not be an attorney) and may inspect and review evidence under 34 C.F.R. § 106.45(b)(5)(vi)

identify provisions of code of conduct that prohibit knowingly providing false statements/information, and

must be provided to parties prior to initial interview in the investigative process so the parties can prepare

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Administrative Leave

34 C.F.R § 106.44(d)

District may place employee respondents on
Title IX administrative leave – only available
AFTER a formal complaint is filed.

Formal
Complaint
Process

Discretionary Dismissal
34 C.F.R. § 106.45(b)(3)

Complaint **may** be dismissed if:

- ✓ complainant notifies the Title IX Coordinator at any time that he/she wishes to withdraw the complaint or an allegation,
- ✓ if the respondent's enrollment or employment ends, or
- ✓ If specific circumstances prevent the educational institution from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.)

Notice of dismissal must be provided to both parties, including the reasons for dismissal and chance to appeal.

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Mandatory Dismissal
34 C.F.R. § 106.45(b)(3)

Complaint **must** be dismissed if

- ✓ the allegations do not constitute sexual harassment as defined,
- ✓ did not occur in the District's program or activity or
- ✓ did not occur against a person in the United States

Notice of dismissal must be provided to both parties, including the reasons for dismissal and chance to appeal

***Dismissal for Title IX purposes doesn't preclude possible action under another provision of a district's code of conduct.**

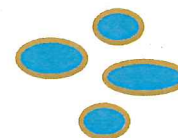
Informal Resolution

34 C.F.R. § 106.45(b)(9)

Cannot offer to facilitate an informal resolution process unless a formal complaint has been filed.

At any point during the formal complaint process, District may offer to facilitate an informal process that does not require a full investigation as long as both parties receive written notice of their rights and the parties provide written, voluntary consent.

Cannot offer informal resolution in the context of a complaint alleging that an employee harassed a student.

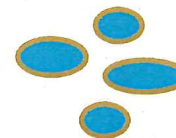


Questions?



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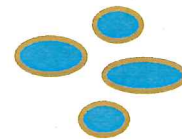
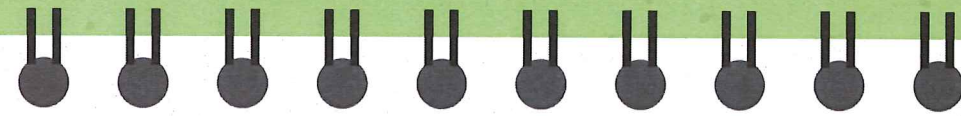
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post on your website, please email:

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Thank you!



Please send me questions
for Session 2.

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